

# Lawmakers, DOJ Announce Legislation To Stop Unfair Business Practices

Legislation introduced in the Delaware House of Representatives Thursday would encourage competition, and protect consumers and business alike, by empowering the Attorney General to intervene against unfair business practices.

Deceptive business practices have been illegal under Delaware's Consumer Fraud Act, passed in 1965. However, Delaware is one of only six states that do not also explicitly ban unfair or unconscionable practices. House Bill 91, sponsored by Rep. David Bentz, D-Newark, and Sen. Trey Paradee, D-Dover corrects that by amending the Consumer Fraud Act to explicitly add unfair practices.

*"Being able to defend consumers against unfair and unscrupulous business practices sounds like a common-sense protection that already should be in place, so it was troubling to learn that Delaware has a loophole in the law," said **Rep. David Bentz**, the lead sponsor of HB 91. "We've seen some businesses use tactics that range from questionable to outright despicable more and more, and our justice department has been unable to take action. By passing this bill, we will take a stand against deceptive, high-pressure and coercive practices. We will level the playing field for the countless companies that conduct business the right way and protect consumers from the unethical actions of these other entities."*

*"In a world of deceptive advertising, shady online marketplaces and unscrupulous salesmen only out to make a fast buck, the shoppers of this state deserve to know*

*Delaware has their back if they get ripped off,” said **Sen. Trey Paradee**. “Unfair and deceptive business practice not only hurt consumers, they also cast a shadow on reputable businesses and can even put them at a disadvantage for holding fast to the principle of fair play. The world of business changes fast and Delaware needs to keep pace to protect the good, upstanding people and companies of this state.”*

*“Some issues are complicated; this one is not,” said **Attorney General Kathy Jennings**. “There is no valid defense of unfair or unethical business practices. Most people assume that they are already illegal, but Delaware’s one of the only states where that isn’t explicitly the case. That hurts consumers, seniors, honest businesses, and competitive markets, and it sends the wrong message to anyone thinking of relocating to Delaware. I’m grateful to Rep. Bentz and Sen. Paradee for sponsoring this legislation and for taking up this issue on behalf of consumers in their districts and across the state.”*

*“This is nearly universal policy in America because it’s a matter of common sense,” said **Carolyn Carter, Deputy Director of the National Consumer Law Center**. “Delaware is one of only six states whose consumer protection statute does not prohibit unfair acts. This amendment will bring Delaware in line with the rest of the country, and greatly improve the protections for Delaware’s consumers.”*

Federal law has prohibited unfair business practices since 1938, and the laws of 44 states and the District of Columbia prohibit unfair or unconscionable practices. Because of Delaware’s weaker Consumer Fraud Act, consumers – and businesses acting as consumers – are vulnerable to unethical or injurious actions that they would be shielded from in other states.

In the wake of the Cambridge Analytica scandal – wherein a

British consulting firm was allowed to collect millions of Facebook users' personal information without their consent – the Federal Trade Commission, the attorneys general of California and the District of Columbia, and others took enforcement actions against Facebook. Delaware was unable to take similar action on this scandal, and in general Delaware's lack of a prohibition on unfair practices prevents it from participating fully in many multistate investigations on consumers' behalf.

Price gouging would also be made illegal by HB 91. While price gouging was banned during the pandemic under the authority of Gov. Carney's emergency powers, Delaware is one of the only states that lacks permanent authority to take action against price gouging in a state or national emergency.

Other unfair acts that could be covered by HB 91 include:

- high pressure sales tactics
- coercive conduct (e.g., conditioning return of a down payment on a consumer's agreement to forfeit part of it)
- unequal knowledge between consumers and merchants (e.g., defective merchandise, dangerous products or sales tactics, failure to provide copies of contracts)
- hidden unaffordability (e.g., loans that direct consumers to pay a minimum amount set at a level such that the consumer will never pay off the loan)
- unethical post-sale tactics (e.g., failure to honor refund policies or warranties, charging for goods or services that consumers didn't request)
- advertising adult products to children

[HB 91](#) will be assigned to a House committee and considered following the Joint Finance Committee's February hearings.